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Approved For Release 2004/05/05 : CIA-RDP84B00890R000300030031-0

97TH CONGRESS
1ST SESSION

S. 179

To amend title II of the Social Security Act to provide penalties for the misuse of social security numbers.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1981

Mr. BAUCUS (for himself, Mr. HARRY F. BYRD, JR., and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title II of the Social Security Act to provide penalties for the misuse of social security numbers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) section 208(g) of the Social Security Act is
4 amended—

5 (1) in the matter preceding paragraph (1), by in-
6 serting “or for the purpose of obtaining anything of
7 value from any person,” before “or for any other pur-
8 pose”; and

1 (2) by adding after paragraph (2) the following
2 new paragraph:

3 “(3) knowingly, alters a social security card
4 issued by the Secretary, buys or sells a card that is, or
5 purports to be, a card so issued, counterfeits a social se-
6 curity card, or possesses a social security card or coun-
7 terfeit social security card with intent to sell or alter it;
8 or”.

9 (b)(1) Section 208 of such Act is amended in the matter
10 following subsection (h) by striking out “shall be guilty of a
11 misdemeanor and upon conviction thereof shall be fined not
12 more than \$1,000 or imprisoned for not more than one year,
13 or both” and inserting in lieu thereof “shall be guilty of a
14 felony and upon conviction thereof shall be fined not more
15 than \$5,000 or imprisoned for not more than five years, or
16 both”.

17 (2) Section 208(e) of such Act is amended by striking
18 out “, shall be guilty of a misdemeanor and upon conviction
19 thereof shall be fined not more than \$1,000 or imprisoned for
20 not more than one year, or both, or” and inserting in lieu
21 thereof “; or”.

22 (c) The amendments made by subsections (a) and (b)
23 shall be effective with respect to violations committed after
24 the date of the enactment of this Act.

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been made monthly, the amount of state benefits would have been correspondingly reduced. *Philpott v. Essex County Welfare Bd.*, N.J.1973, 93 S.Ct. 590, 409 U.S. 413, 34 L.Ed.2d 608.

5. Allimony

Claim of wife of social security benefits recipient, being different from claim of creditor, was unaffected by exemption set forth in this section, and use of social security check pending determination of permanent allimony was properly restrained. *Brown v. Brown*, 1972, 288 N.E.2d 352, 32 Ohio App.2d 139.

6. Certification by Secretary

District court which fixed counsel fees and provided for their payment out of past due disability benefits recovered by claimant did not exceed its judicial authority nor violate section 405 of this title and this section providing for certification of payments and prohibiting transfer, assignment, attachment or gar-

nishment of future payments. *Celebrese v. Sparks*, C.A.Tex.1965, 342 F.2d 286.

Transfer of deceased wage earner's right to accrued and unpaid primary insurance benefits to personal representative is not prohibited under this subchapter regardless of whether wage earner's claim to such benefits has been certified by Administrator, now Secretary, as required by this subchapter. *Gardner v. Ewing*, D.C.Ohio 1950, 88 F.Supp. 315, affirmed 185 F.2d 781, reversed in part on other grounds 71 S.Ct. 684, 341 U.S. 281, 95 L.Ed. 968.

7. Discovery

In view of fact that social security payments received by judgment debtor were immune from legal process by operation of law, there could be no fraud in transfer of such payments to judgment debtor's joint bank account, for a discovery will not lie where property of which discovery is sought cannot be reached by the creditor. *Century Indem. Co. v. Mead*, 1960, 159 A.2d 325, 121 Vt 434.

§ 408. Penalties

Whoever—

(a) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(1) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(2) whether net earnings from self-employment (as such term is defined in this subchapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(3) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as de-

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OLD-AGE, ETC., BENEFITS

42 § 408

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terminated under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(b) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this subchapter; or

(c) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(d) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(e) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(f) willfully, knowingly, and with intent to deceive the Secretary as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Secretary with respect to any information required by the Secretary in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

See Pocket Part

(g) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled—

(1) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Secretary (in the exercise of his authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Secretary by him or by any other person; or

(2) with intent to deceive, falsely represents a number to be the social security account number assigned by the Secretary to him or to another person, when in fact such number is not the social security account number assigned by the Secretary to him or to such other person;

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shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Aug. 14, 1935, c. 531, Title II, § 208, 49 Stat. 625; Aug. 10, 1939, c. 666, Title II, § 201, 53 Stat. 1362; Aug. 28, 1950, c. 809, Title I, § 109(c), 64 Stat. 523; Sept. 1, 1954, c. 1206, Title I, § 111(b), 68 Stat. 1085; Aug. 28, 1958, Pub.L. 85-840, Title III, § 310, 72 Stat. 1034; Sept. 13, 1960, Pub.L. 86-778, Title II, § 211(m), 74 Stat. 958; Oct. 30, 1972, Pub.L. 92-603, Title I, § 130(a), 86 Stat. 1359.

Historical Note

1972 Amendment. Subsecs. (f), (g). Pub.L. 92-603 added subsecs. (f) and (g).
1960 Amendment. Subsec. (a). Pub.L. 86-778 substituted "section 403(f) of this title" for "section 403(e) of this title" in cl. (3).

1958 Amendment. Pub.L. 85-840 amended section generally, and, among other changes, inserted references to the Internal Revenue Code of 1954, and made penalty provisions applicable to cases (1) where false statements or representations as to whether wages were paid or received for employment, or whether net earnings from self-employment were derived, or whether a person entitled to benefits under this subchapter had earnings in or for a particular period, or as to the amount thereof, are made for the purpose of obtaining or increasing benefits; (2) where false statements or representations are made in any application for disability determination; (3) where a person intentionally conceals or fails to disclose knowledge of any event affecting his or another's initial or continued right to payment, and (4) where a person converts a payment that he received for the use and benefit of another.

1954 Amendment. Act Sept. 1, 1954 made it clear that the penalty provisions of the section extended to cases of false statements or representations as to the amount of net earnings from self-employment derived or the period during which derived.

1950 Amendment. Act Aug. 28, 1950 substituted "subchapter E of chapter 1 or

subchapter A or E of chapter 9 of the Internal Revenue Code of 1939" for "the Federal Insurance Contributions Act".

1939 Amendment. Act Aug. 10, 1939 amended section generally by incorporating provisions of former section 409 of this title.

Effective Date of 1972 Amendment. Section 130(b) of Pub.L. 92-603 provided that: "The amendments made by sub-section (a) [adding subsecs. (f) and (g) of this section] shall apply with respect to information furnished to the Secretary after the date of the enactment of this Act [Oct. 30, 1972]."

Effective Date of 1960 Amendment. Amendment of subsec. (a)(3) of this section by Pub.L. 86-778 effective in the manner provided in section 211(p) and (q) of Pub.L. 86-778, see note under section 403 of this title.

Effective Date of 1939 Amendment. Amendment of section by Act Aug. 10, 1939 was made effective Jan. 1, 1940 by section 201 of such Act.

Legislative History. For legislative history and purpose of Act Aug. 28, 1950, 1950 U.S.Code Cong.Service, p. 3257. See also, Act Sept. 1, 1954, 1954 U.S.Code Cong. and Adm.News, p. 3710; Pub.L. 85-840, 1958 U.S.Code Cong. and Adm. News, p. 4218; Pub.L. 86-778, 1960 U.S. Code Cong. and Adm.News, p. 3008; Pub.L. 92-603, 1972 U.S.Code Cong. and Adm.News, p. 4989.

Cross References

False, fictitious or fraudulent claims, see section 287 of Title 18, Crimes and Criminal Procedure.

Fraud and false statements, see chapter 47 of Title 18.

Misdemeanor as an offense punishable by imprisonment for a term not exceeding one year, see section 1 of Title 18.

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Fraud 68.10

Sentence and fine

Construction with
Elements of offense
Evidence 3
Information 3
Instructions 7
Limitations 4
Statements by pr

1. Construction

Enactment of penalties for use in determining old-age, etc. section 1001 of ing false statement or agency of the sector could el caused of making payment for se patients under Chakmakis, C.A.

Existence of a demenor pen makes false st in application assistance provided not preclud falling within der previously the 18 providing one who is an tion of any de United States makes any false tanky, D.C. Cal firmed 182 F.2 S.Ct. 339, 414 rehearing den 1138, 38 L.Ed.2

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3. Information

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death and, thereafter, assets were not exempt in connection with care of a child while ward of the state hospital. *Matter of Vary*, 258 N.W.2d 11, 401 Mich. 2d 11, 399 S.Ct. 1283, 434 U.S. 224, 79 S.Ct. 1283, 434 U.S. 224 793.

Funeral payments

This chapter to furnish funds to aged needy individuals with clear wording of this section which seeks to protect individuals by prohibiting persons and other legal persons available against living persons and other legal persons be interpreted in context of this section, all of which accrued to benefit of the living and actions commenced against the living. *Matter of Vary*, 258 N.W.2d 11, 401 Mich. 2d 11, 399 S.Ct. 1283, 434 U.S. 224, 79 S.Ct. 1283, 434 U.S. 224 793.

In this section exempting payments from, inter alia, not exempt funds derived from insurance under the execution or impounding of any award. *Huskey v. Ray*, 530 P.2d 1375.

Effect of any exemption on assignability of benefits to be contained in social security and veterans benefits, section 3101 of Title 38, would not prevent federal benefits in determination of child support to be paid. *Matter of Vary*, 258 N.W.2d 11, 401 Mich. 2d 11, 399 S.Ct. 1283, 434 U.S. 224, 79 S.Ct. 1283, 434 U.S. 224 793.

Funeral funds could not attach to social security payments in the checking account in the name of the decedent. Funds were explicitly excluded from the proceeding to judgment. *Houshahar v. Chase Manhattan Bank*, 1975, 237 N.W.2d 447, affirmed 258 N.W.2d 447, 399 S.Ct. 1283, 434 U.S. 224, 79 S.Ct. 1283, 434 U.S. 224 793.

Funeral funds which had accrued to the decedent's bank account during her institutionalization by general asset of her estate and payment of such funds to the decedent's estate by provision of this section, traceable social security benefits from legal process by no heir of decedent was such funds for support. *Estate of Vary*, 258 N.W.2d 447, affirmed 258 N.W.2d 447, 399 S.Ct. 1283, 434 U.S. 224, 79 S.Ct. 1283, 434 U.S. 224 793.

Not recover by legal process funds which have been paid in savings or checking

Security benefits retain character in traceable once they pass to estate. Loss of such characteristics thus lose protection of section barring creditors' access in recovering debt. *Id.*

Administrative actions. Commissioner of Department of Social Services, spousal income attributing eligibility for medical aid applied in situation

where one spouse was confined for long term at nursing or convalescent home, violated compulsory legal process provision of this section. *Manfredi v. Maher*, D.C. Conn. 1977, 435 P.Supp. 1103.

Disability funds

Social security disability payments are exempt from legal process. *Potter v. Potter*, 1979, 404 A.2d 352, 100 N.J.Super. 10.

Where amount of lump-sum social security disability payment which arose out of former husband's injury and which was paid to wife was in apparent excess of all arrearages, where there was no adjudicated support obligation prior to incurring by former husband of disability compensated for by social security payment, and where it did not appear that former husband had any other income sufficient to meet support obligation or that his failure to provide support was in any way willful or contumacious, former wife's receipt of payment was equitably required to be deemed in full satisfaction of any outstanding obligation of former husband which had accrued as of that time. *Id.*

Under relevant provision of this section and under the United States Supreme Court's *Philpott* decision construing said provision, legal process cannot be used by the states to reach protected funds, i.e., benefit payments under the supplemental security income program; however, the *Philpott* decision does not oblige the underlying obligation of the debtor who remains liable for the debt, nor does it prohibit the use of nonlegal means to reach protected funds. *Tunnicliff v. Com.*, Dept. of Public Welfare, 1978, 396 A.2d 1188, 483 Pa. 275.

Agreement between employer and employee that any payments received under this subchapter would offset benefits payable under employer's long-term disability plan was not prohibited transfer or assignment of right to future social security payments, and agreement was neither contra bonos mores nor prohibited by law but, rather, was binding. *Kille-*

brew v. Abbott Laboratories, La.App. 1977, 352 So.2d 332, writ granted 354 So.2d 236, affirmed 359 So.2d 1273.

11. Relief and welfare funds

Mere failure of the state Department of Public Welfare, which granted appellants interim assistance pending their reception of supplemental security income benefits, to inform appellants that they might assert their *Philpott* rights and resist collection of the debt by use of legal process from one specific source—the SSI benefits—did not render appellants' repayment involuntary. *Tunnicliff v. Com.*, Dept. of Public Welfare, 1978, 396 A.2d 1188, 483 Pa. 275.

Signing by appellants, who received interim assistance from state Department of Public Welfare pending their reception of supplemental security income benefits, of "Loan Agreement" and "Agreement and Authorization to Pay Claim" forms, and the state's nondisclosure to appellants of their *Philpott* "rights," without more, were methods that were neither "tantamount to legal process" nor did they render involuntary appellants' reimbursement of the DPW interim assistance; therefore, there was full compliance with both the spirit and letter of *Philpott* and provision of this section, declaring SSI benefits not subject to execution, levy, attachment, garnishment "or other legal process." *Id.*

12. Garnishment

Any garnishment of federally exempted social security funds conducted under color of Pennsylvania postjudgment garnishment procedures is unlawful and anyone who proceeds with such a garnishment will be liable for return of those funds. *Finberg v. Sullivan*, D.C. Pa. 1978, 481 F.Supp. 253.

Garnishment of judgment debtor's savings account was unlawful, even though accomplished pursuant to valid postjudgment garnishment procedures of Pennsylvania, where it was nevertheless carried out in violation of exemptions available to judgment debtor under both state and federal law. *Id.*

§ 408. Penalties

Whoever—

[See main volume for text of (a) to (f)]

(g) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for any other purpose—

(1) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Secretary (in the exercise of his authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Secretary by him or by any other person; or

(2) with intent to deceive, falsely represents a number to be the social security account number assigned by the Secretary to him or to another person, when in fact such number is not the social security account number assigned by the Secretary to him or to such other person; or

(h) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

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shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

As amended Oct. 4, 1976, Pub.L. 94-455, Title XII, § 1211(a), (d), 90 Stat. 1711, 1712.

1976 Amendment. Subsec. (g). Pub.L. 94-455, § 1211(a), inserted preceding cl. (1) "or for any other purpose" following "entitled".

Subsec. (h). Pub.L. 94-455, § 1211(d), added subsec. (h).

Change of Name. The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare was redesignated the Secretary or official, as appropriate, of Health and Human Services, with any reference to the Department of Health, Education, and Welfare, the Secretary of Health, Education, and Welfare, or any official of the Department of Health, Education, and Welfare, in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the effective date of Pub.L. 94-88, as prescribed by section 601 of Pub.L. 94-88, Title VI, Oct. 17, 1976, 90 Stat. 896, set out as a note under section 3601 of Title 20, Education, deemed to refer and apply to the Department of Health and Human Services or the Secretary of Health and Human Services, respectively, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under Pub.L. 94-88, Title III, §§ 301-307, Oct. 17, 1976, 90 Stat. 677-681. See sections 3441 to 3447 and 3508 of Title 20.

Legislative History. For legislative history and purpose of Pub.L. 94-455, see 1976 U.S. Code Cong. and Adm. News, p. 2397.

2. Elements of offense

In order to establish "fraudulent intent" under provision of this section declaring it a misdemeanor to conceal or fail to disclose, with intent fraudulently to secure payment, any event affecting right to social security payments, the Government must show that defendant knew that he was legally obligated to disclose certain information, and must prove that defendant knew that by withholding the information he would receive greater payments than he was entitled to. U. S. v. Phillips, C.A. Fla. 1979, 600 F.2d 535.

Specific intent is an essential element of offense under this section. U. S. v. Ciocoppo, C.A. Mo. 1975, 517 F.2d 22.

3. Information

While indictment, charging doctor with filing false claims for payment of services rendered under Medicare program, failed to state that defendant "knowingly and willfully" made false statements charged, the indictment's allegations that defendant unlawfully made false statements and representations of material

facts to secure payment under this chapter for medical services rendered "whereas in truth and fact, as the said defendant then and there well knew, such patients visited the defendant or were visited by the defendant less frequently than stated, or did not receive the treatment as designated" set out the essential facts constituting the offense charged, including the element of intent. U. S. v. Ciocoppo, C.A. Mo. 1975, 517 F.2d 22.

6. Evidence

Agent's testimony that defendant "indicated" that he "understood the meaning of disability" was insufficient to support finding that defendant acted with fraudulent intent in failing to disclose that he was working while receiving social security disability benefits, where agent did not reveal what defendant had said or done to convince her that he understood the meaning of disability and did not quote, paraphrase, or even objectively summarize any statements that might have helped the jury to decide whether defendant knew that he was not entitled to payments. U. S. v. Phillips, C.A. Fla. 1979, 600 F.2d 535.

In prosecution arising from defendant's failure to disclose that he was working while receiving social security disability payments, in which it appeared that defendant's illness continued to impair his ability to work and that he was working irregularly, that he had only sixth-grade education, that trained Social Security Administration employee did not think that defendant was clearly ineligible for benefit, and that, although defendant failed to answer certain letters, he never made any false statement and he provided accurate information when interviewed, evidence was insufficient to support finding that defendant had fraudulent intent. Id.

Evidence was sufficient to support defendant's conviction for submitting false claims for services not actually rendered to patients who were beneficiaries of social security medicare program. U. S. v. Holt, C.A. N.C. 1975, 529 F.2d 881.

7. Instructions

Despite the claim of defendant, a doctor who was charged with filing false claims for payment for services rendered under the Medicare program, that the trial court's instructions were plainly erroneous because the jury was not informed that the false statements must have been made to secure Medicare payments in order to constitute the offense charged, a reading of the instructions as a whole disclosed two instances in which the jury was told that this was a factor in the offense charged. U. S. v. Ciocoppo, C.A. Mo. 1975, 517 F.2d 22.

§ 409. Definition of wages

For the purposes of this subchapter, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration and remuneration paid after 1950 for employment, including the cash value of all remuneration paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

[See main volume for text of (a) to (f)]

(g)(1) Remuneration for services rendered by an employee for or domestic

(2) Cash remuneration to an employee if the cash remuneration is for services rendered by an employee for or domestic

(3) Cash remuneration for services rendered by an employee for or domestic if the cash remuneration is for services rendered by an employee for or domestic

(j) Remuneration for services described in section 409 (workers), if the employee for

(n) Any payment made to a former employee

(o) Any payment made to an employee for benefits under a plan or contract entered into prior to the employee's termination of service

(p) Remuneration for services rendered by an employee for or domestic if the payment is in such year as less than \$100;

(p) 1 Any payment made to an employee for or his dependents for amounts received

(q) Any payment made to an employee if the payment is not able to be believed or benefit from

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nothing, and or subdivision agreement. included as such

As amended Dec 91 Stat. 1549.

6, 1978, Pub.L. 95-480 in original.